



SECP  
INSURANCE DIVISION  
Islamabad

Before Hasnat Ahmad, Director (Insurance)

*In the matter of*

EFU Life Assurance Limited

Show Cause Notice No. and Date: ID/Enf/EfuLife/2016/4395, November 8, 2016

Date of Hearing: November 24, 2016

Attended By: Syed Shahid Abbas  
Corporate Secretary  
M/s. EFU Life Assurance Limited.

Mr. Muhammad Asim Khan  
Deputy General Manager Accounts  
M/s. EFU Life Assurance Limited.

Date of Order: December 29, 2016

**ORDER**

Under Section 17(3) and Section 45 read with Section 158 of the Insurance Ordinance, 2000.

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This Order shall dispose of the proceedings initiated against M/s. EFU Life Assurance Limited (the "Company") and its Directors for alleged contravention of Section 17(3) and Section 45 read with Section 158 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on the business of life insurance. The Company submitted its Annual Audited Accounts and Regulatory Returns (the "financial statements") for the year ended December 31, 2015 in pursuance of the provision of Section 46(1) and Section 51(1) of the Ordinance.

3. During the course of examination of the financial statements of the Company for the year ended December 31, 2015 it was observed that addition in the 'Capital Work-in-Progress' (Shareholders Fund) did not disclose any addition on the face of Balance Sheet while Cash Flow Statement stated 'Fixed Capital Expenditure' of Rs. 684.60 million.

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4. The Company was advised to provide explanation vide letters dated July 28, 2016 and August 31, 2016. The Company vide letter dated August 31, 2016 clarified that:

*"Addition to fixed assets amounting to Rs. 684.60 million as shown in Cash Flow includes Rs. 525.7 million being addition to capital work in progress. However, it was erroneously shown in shareholders fund instead of investment linked fund. The mistake has now been identified and will be rectified."*

5. In view of the above, it appeared that the Cash calculated by the Company for both the 'Shareholder's Fund' as well as the 'Investment Linked Statutory Fund' was incorrect, hence it also appeared that the Balance Sheet as well as the Cash Flow Statements contained material misstatements.

6. The Company *prima facie* willfully and knowingly misreported its balances in the Cash flow Statement and the Balance sheet in violation of Section 17(3) and Section 45 of the Ordinance thereby giving a misleading solvency position with reference to the Investment Linked business as stated below:-

<i>Investment Linked Business</i>	<i>Rs. in 000's</i>
<i>Excess Assets Over Liabilities</i>	<i>82,904,990</i>
<i>Net Solvency Requirement</i>	<i>82,904,991</i>
<i>Excess/(Deficit) Solvency Margin Over Minimum Requirement</i>	<i>(1)</i>
<i>Impact of Fixed Capital Expenditure</i>	<i>(525,700)</i>
<i>Excess/(Deficit) Solvency Margin Over Minimum Requirement</i>	<i>(525,701)</i>

7. Section 17(3) of the Ordinance provides that:

*"Assets, liabilities, revenues and expenses of funds. - (3) All assets and investments related to the business of a statutory fund shall be included in that fund."*

8. The provisions of Section 45 of the Ordinance state that:

*"Books and records.- (1) Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records."*

*(2) Books, accounts and records in respect of insurance business transacted in Pakistan shall be maintained in Pakistan and in either the English or the Urdu language.*

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(3) For the purposes of this Ordinance, proper books and records shall include without limitation:

- (a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected and record of any transfer, assignment or nomination of which the insurer has notice;
- (b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor; and
- (c) such other books and records as may from time to time be prescribed.

(4) For the purposes of this Ordinance, the expression "books" includes –

- (a) a register;
- (b) accounts or accounting records, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

(5) A book that is required by this Ordinance or the Companies Ordinance, 1984 to be kept or prepared by an insurer may be kept or prepared:

- (a) by making entries in a bound or loose leaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the Commission. Provided that the matters recorded or stored are capable, at any time, of being reproduced in a written form or a reproduction of those matters is kept in a written form approved by the Commission.

(6) An insurer shall take all reasonable precautions, including such precautions, if any, as may be prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required to be kept or prepared by an insurer."

9. In view of the above, Show Cause Notice bearing number ID/Enf/EfuLife/2016/4395 dated November 8, 2016 was issued to the Respondents, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of Section 158 of the Ordinance for the alleged contravention of Section 17(3) and Section 45 of the Ordinance.

10. In response to the said Show Cause Notice, the Respondents, vide letter dated November 16, 2016, submitted their written response. The reply to the SCN

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was not found satisfactory however, before proceeding further in the matter it was considered necessary to provide an opportunity of hearing to the Respondents.

11. The hearing was held on November 24, 2016 at Head Office of the Securities and Exchange Commission of Pakistan. The said hearing was attended by Mr. Shahid Abbas, Corporate Secretary of the Company, and Mr. Muhammad Asim, Deputy General Manager Accounts as authorized representative on behalf of the Respondents.

12. Submission of the Respondents both through their reply to SCN and at the time of hearing are summarized as under:

- i. The Respondents admitted that there was a presentation error in the statement of cash flow in the financial statements for the year ended December 31 2015, however, this error did not result in the cash so calculated in the said cash flow being incorrect. The incorrect addition of an amount of Rs 525.7 in shareholders' fund under the title "fixed capital expenditure" was adjusted in "other operating receipts" and hence the effect was nullified. The same happened in Investment Linked Business Fund. The Respondent did not agree with the contention that the figures reported on the Balance Sheet and on Cash Flow in respect of cash in hand / bank as at balance sheet date were incorrect.
- ii. The assets and liabilities on the Balance Sheet, including fixed assets were correctly reported in respective funds and hence the statement of solvency was also correct. The Company's solvency margin is correct and it meets the minimum solvency requirements. The Respondents stated that the aforesaid error should not be viewed as violation of section 17(3) and Section 45 of the Ordinance. The Respondents further stated that the mistake was rectified in the Half Yearly report of 2016.
- iii. The Respondents requested to condone the incorrect presentation of cash flow statement and withdraw the show cause proceedings.

13. As per Section 45 of the Ordinance, the Company was required to maintain proper books and record. Furthermore, Section 17(3) requires that insurer include all assets and investments related to the business of a statutory fund shall be included in that fund. There appears to be a misstatement on the face of financial statements for the year ended December 31, 2015. The Cash Flow Statement showing figure of Rs. 525.7 million in the wrong fund account. Cash flow statement is a part of financial statements and any mis-reporting in Cash Flow Statement would constitute as misstatement in the financial statements. Users of the financial statements rely on the data provided in the audited financial statements. The mistake in the financial statements breached their trust. The Respondents were required to maintain proper books and record. The responsibility of which lies with the management of the Company.

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14. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance and other legal references, I am of the view that the element of default of Section 17(3) and Section 45 of the Ordinance is there, for which the fine/penalty as provided under 158 of the Ordinance can be imposed onto the Company and/or its Directors.

15. In exercise of the powers conferred on me under Section 158 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of imposing the maximum fine as provided under the said provision, impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Company, due to the default of Section 17(3) and Section 45 of the Ordinance, as mentioned hereinabove. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

16. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

17. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the chief executive officer or directors of the Company) in accordance with the law on matters including those subsequently investigated or otherwise brought to the knowledge of the Commission.

**Hasnat Ahmad**  
Director (Insurance)

